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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO. 49 OF 2007

The Commissioner of Customs (Import).. Appellant

Versus

M/s. Shankar Trading Company .. Respondent

Mr. Y.S. Bhate with Mr. Y.R. Mishra for Appellant.

CORAM: F.I. REBELLO &
J.P. DEVADHAR, JJ.
DATED: SEPTEMBER 06, 2007

P.C.:

. The tribunal by its order dated 18.8.2005 noted that the challenge before them was only to the quantum of fine and penalty as the respondents herein had argued that the same was excessive.

. The tribunal noted that for import of similar goods around the similar time in other order of the Commissioner (Appeals), the fine of Rs. 9,00,000/- has been reduced to Rs.5,00,000/- and penalty has also been reduced from Rs.75,000/- to Rs.50,000/-. Based on that order the fine was reduced to Rs. 3,00,000/- and penalty to Rs.35,000/-. The appellant herein moved an application before the tribunal seeking to rectify its order No. A/75/WZB/05-C1(CSTB) dated 18.08.2005 with respect to its operative portion as contained in Para 2 of

the said order indicating therein the details of the Commissioner (Appeals) order relied upon viz Commissioner (Appeals) Order number and name of the party in respect of whom the said order was passed was not disclosed and as such there is error apparent.

. The tribunal in Para 3 of the order gave the name of the party as Devi Enterprises and also the Appeal No. being 281 of 2000 dated 27.4.2000 which was passed by the Commissioner of Customs (Appeals), Mumbai.

. In the present appeal according to appellants, as the tribunal has given no reasons for reducing the penalty and fine, the impugned order is liable to be set aside. Reliance is placed on the judgment of this court in Customs Appeal No. 13 of 2006 in the case of Commissioner of Customs (General), Mumbai Vs. LA Grande Projects Limited decided on 21.3.2006.

. We have heard the learned counsel. In the first instance, in the appeal memo, it is not the case of the appellants that there is no order existing dated 27.4.2000 passed in Customs Appeal No. 281 of 2000 in the case of Devi Enterprises. Secondly, there is no averments that the facts and law in that case and

the present case are distinct and therefore, not warranting the view taken by the learned tribunal.

. The only contention as raised in ground in Para 5 is that the order in Devi Enterprises appears tobe not applicable. Neither is the judgment produced before us nor is it distinguished on the ground that it was not applicable to the facts of the case in hand.

. Once the tribunal relied on the judgment, for reducing the penalty and fine, in our opinion, it cannot be said that no reasons were given and consequently the questions of law as raised would not arise. Hence, appeal dismissed.

(J.P. DEVADHAR, J.) **(F.I.REBELLO, J.)**